Mem. Mess. Tho. Gibson &c

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Mr Da. Dickson

January 17. 1771.

MEMORIAL

FOR

Meſſ. THOMAS GIBSON miniſter of Kirkurd, James Moffat miniſter of Newlands, Alexander Johnſton miniſter of Lyne, William Dalgleiſh miniſter of Peebles, John Baird miniſter of Stobbo, and William Oman preſbytery-clerk of Peebles,

AGAINST

Mr DAVID DICKSON late miniſter of Newlands.

MR DICKSON, in his memorial, has given your Lordſhips a long and minute detail of the proceedings, both relative to his ſentence of depoſition, and the actions which have followed in the civil courts in conſequence of it: As the memorialiſts humbly apprehend, that the cauſe, in its preſent ſituation, will be confined to the competency of your Lordſhips to review and reduce the ſentence of the eccleſiaſtical courts, they ſhall therefore content themſelves with bringing under your Lordſhips eyes the great outlines only of the cauſe; and the rather, as they were ſo fully ſtated in the late competition for the ſtipend betwixt Mr Dickſon and Mr Moſfat the preſent incumbent, and muſt therefore be ſtill freſh in your Lordſhips memories.

Mr Dickſon having been regularly libelled, and convicted of certain crimes, was depoſed from the office of the miniſtry by the preſbytery of Peebles, 22d of April 1767. From this ſentence, he appealed to the ſynod of Lothian and Tweeddale, to meet the month of May following. But, as he did not appear to ſupport his reaſons of appeal, the ſentence became final. Of this date, he charged the heritors of the pa- Oct. 26.

riſh of Newlands, for payment of the paſt year's ſtipend, upon diſcuſſing a ſuſpenſion brought by the heritors, the original minutes were produced before your Lordſhips by the preſbytery-clerk, without any authority whatever from that court, as they appeared to your Lordſhips to be extremely irregular, and as the heritors, perhaps willing to pay the ſtipend to Mr Dickſon, provided they could do it in ſafety, were not at proper pains to explain the nature of judicial proceedings in the eccleſiaſtical courts, the letters were found orderly proceeded, and the ſtipend for the year 1767 decerned to Mr Dickſon. This ſentence of your Lordſhips embarraſſed the preſbytery of Peebles prodigiouſly. They were conſcious, that their ſentence of depoſition had been regularly pronounced, although your Lordſhips had thought proper to deny it its civil effect. Therefore, to obviate all difficulties ariſing from the irregular appearance of their minutes and proceedings, they made up their minutes into a regiſter from the year 1761, which, after being regularly ſigned by the ſucceſſive moderators, were reviewed and atteſted by the ſynod of

April 1768. Lothian and Tweed-dale. The ſynod however, as the general aſſembly was at hand, referred the whole matter to their conſideration. The aſſembly appointed a numerous committee,

May 1768. conſiſting of members, miniſters, and elders, from every ſynod in Scotland, to judge of the formality of the proceedings, and to report. The conſequence of this report was, that the aſſembly, having conſidered the whole proceedings, and read the ſentence of depoſition from the original minutes, unanimouſly found, that Mr Dickſon had been depoſed from the office of the miniſtry, the 22d of April 1767, and that the whole proceedings were formal and agreeable to the rules of the church. Mr Moffat, who had been ordained miniſter of Newlands the 23d of September 1768, charged the heritors, 25th November following, upon his act of ordination, for the half year's ſtipend due: The heritors called Mr Dickſon and Mr Moffat by a multiple-poinding to compete upon,

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and aſcertain their preferences to the ſtipend. In evidence of Mr Dickſon's depoſition, an extract from the records of the preſbytery of Peebles, and an extract of the ſentence of the general aſſembly, were produced. Lord Kaims Ordinary, of this date, pronounced an interlocutor: 'Finds, that there 'is now ſufficient evidence of Mr Dickſon's depoſition and 'therefore, prefers Mr James Moffat to the ſtipend; and de-'cerns in the preference againſt the purſuers of the multiple-'poinding for payment accordingly; and, upon petition and 'anſwers, your Lordſhips adhered.' Feb 1. & 11. 1769.

Mr Dickſon, finding it impoſſible to harraſs the heritors any longer in this ſhape, now tries it in a manner perfectly new and unprecedented. He has brought the ſentence of the preſbytery of Peebles under reduction and improbation, imagining, that, if it were reduced and improved, his right to the ſtipend of the pariſh of Newlands would again revive. At the ſame time, Mr Dickſon fairly confeſſes, that he has not the leaſt idea, that your Lordſhips can ever reſtore to him his eccleſiaſtical character; though the inconſiſtency of the demand muſt appear at firſt ſight perfectly obvious, it ſhall afterwards be more particularly conſidered. The memorialiſts think this an improper time to ſtate minutely the detail of the crimes for which he was accuſed, or the relevancy of the libel upon which he was convicted and depoſed. From the facts ſtated by Mr Dickſon, it is evident that his reaſons of reduction are neither more nor leſs, than that the ſentence of depoſition was not regularly ſigned by the moderator. Your Lordſhips however were ſatisfied, when the cauſe came before you in the ſhape of a multiple-poinding, that the ſentence of depoſition had been regularly ſigned by the moderators, and atteſted according to the forms of the church. The queſtion, therefore, now ſeems to be, Whether or not your Lordſhips can overturn the whole proceedings of the eccleſiaſtical courts, for informalities, in which, by law, it is incompetent for you to judge, and give the ſtipend to a man altogether unqualified to perform the miniſterial offices. The preſent proceſs came in Mar. 1769.

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courſe of the rolls before Lord Auchinleck, and Mr Dickſon ſatisfied the production, by giving in an extract of the ſentence of depoſition, with which the Lord Ordinary made great aviſan-
July 26. dum. Of this date, your Lordſhips remitted to the next week's
1769. ordinary to diſcuſs the reaſons of reduction. The proceſs
Aug. 5. came of courſe before Lord Barjarg, who, after ſome precedure,
1769. (in which the memorialiſts always inſiſted upon the irregularity and impropriety of their citation,) pronounced the follow-
July 26. ing interlocutor: 'In reſpect none of the defenders called appear
1770. 'in defence, againſt the reaſons of reduction of the writs 'quarrelled, ordains the purſuer to give in a memorial of the 'competency of the reduction before this court, with cer-'tification.'

Before proceeding to ſtate the merits of the cauſe, the memorialiſts beg leave to ſubmit an objection to the ſummons and citation, which they humbly conceive ſufficient to ſtop all procedure in the preſent ſhape of the cauſe. Your Lordſhips will obſerve, that the memorialiſts are called to defend, in this proceſs, *as individuals only*. Inſtead of calling the preſbytery of Peebles, which, as a corporation, is alone reſponſible for its proceedings, Mr Dickſon has ſummoned the memorialiſts only to defend the ſentence which they are by no means bound, or capable as individuals, to ſupport. The defenders who now appear, and for whom this memorial is preſented, are, Thomas Gibſon, miniſter of Kirkurd; James Moffat, miniſter of Newlands; Alexander Johnſton, miniſter of Lyne; William Dalglieſh, miniſter of Peebles; and John Baird, miniſter of Stobbo; five miniſters out of twelve in the preſbytery of Peebles; and William Oman the preſbytery's clerk. How improper this mode of citation is, the memorialiſts ſubmit to your Lordſhips. They have no intereſt to ſupport the ſentence of the preſbytery of Peebles, nor can any ſentence pronounced upon this ſummons affect it. Though your Lordſhips ſhould decern in the perſonal concluſion of damages, ſtill the ſentence of the preſ-

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bytery would ſtand valid and unaffected. Theſe objections the defenders ſuggeſted before the Lord Ordinary, and take this method, in conſequence of his interlocutor, to ſubmit them now to your Lordſhips. In further obedience to the Lord Barjarg's interlocutor, they will ſtate what occurs to them upon the competency of the court to judge in this proceſs of reduction and improbation.

It is a rule univerſally received in all actions, that the purſuer muſt produce an intereſt in the event of the cauſe, and demonſtrate that the conſequences of it may be beneficial to him. This rule, which is always obſerved to prevent vexatious proceſſes, merits particular application in improbations, upon the conſequences of which the characters always, and ſometimes the lives, of the defenders depend. To apply this rule to the preſent caſe: Suppoſe the ſentence of the preſbytery improved and ſet aſide, what beneficial conſequences would then ariſe to Mr Dickſon? None that the memorialiſts can perceive. The miniſter regularly ordained and ſettled according to law, is alone intitled to draw the ſtipend. Your Lordſhips cannot force the eccleſiaſtical courts to receive Mr Dickſon as the miniſter of Newlands pariſh; he can never therefore be entitled to the ſtipend, or reap the ſmalleſt advantage from any ſentence which your Lordſhips may in this action pronounce. You have already found Mr Moffat, the preſent incumbent, intitled to draw the ſtipend. The ſentence of the general aſſembly, approbatory of the proceedings of the preſbytery of Peebles, (which cannot be affected by any reduction of the original ſentence of depoſition), would found ſufficient evidence, that Mr Dickſon had been regularly depoſed; and if a competition ſhould again enſue betwixt Mr Dickſon and, Mr Moffat, you would find yourſelves barred from rejudging the merits of the cauſe, and bound by your former ſentence to prefer Mr Moffat to the ſtipend. So that, conſidering the cauſe in all theſe points of view, Mr Dickſon can

reap no benefit from reducing the ſentence of depoſition, and ſhould therefore be prevented from proceeding any further in it.

Mr Dickſon is at great pains in his memorial to ſeparate the eccleſiaſtical character from the right to the ſtipend, and to convince your Lordſhips, that the queſtion is of a mixed nature, as he calls it. Two caſes occur, in which perhaps Mr Dickſon's obſervation may hold juſt; but which are entirely foreign from the preſent queſtion. Statute has impowered your Lordſhips to authorize the patron to retain the ſtipend as vacant, if the kirk-courts ſhall either refuſe his lawful preſentee, or ſhall ſettle another in oppoſition to him. In theſe caſes, your Lordſhips, under the authority of ſpecial ſtatute, can ſeparate the civil right to the emoluments of the benefice, from the eccleſiaſtical character. Further your Lordſhips cannot go; as, in all other caſes, whether in queſtions reſpecting the propriety of ordination or depoſition, the miniſter is, *ipſo facto*, by a judgment of the church-courts, intitled to, or deprived of, all right whatever to the ſtipend. Such is the line drawn by the legiſlature betwixt the civil and eccleſiaſtical juriſdictions, and no precedent introductory of contrary principles can be produced. Whatever be the proceedings of eccleſiaſtical courts, and however diſagreeable to the ideas of ſtrict form, your Lordſhips are bound to give execution to their ſentences upon production of uncontroverted evidence of their exiſtence.

But Mr Dickſon inſiſts that your Lordſhips ſhould ſuſtain your juriſdiction to reduce eccleſiaſtical proceedings *quoad* the ſtipend, as the power of reduction, upon an alledgeance of falſehood and forgery, is competent to no other court. The memorialiſts cannot humbly imagine your Lordſhips will ſupport your juriſdiction as competent to review the ſentences of eccleſiaſtical courts in the ſhape of reduction, more than in any other ſhape, whether of ſuſpenſion or advocation; for

for there is no more neceſſary, than to wait till the ſentence be full and compleated, and then it may be reviewed by reduction. By ſuſtaining your juriſdiction in this caſe, the whole of the eccleſiaſtical proceedings, and the moſt material effects of them, namely, beſtowing or taking away the right to the ſtipend, are thrown proſtrate at your feet, to be uſed according to your pleaſure. If the whole facts alledged by Mr Dickſon, (which, by the bye, your Lordſhips rejected as inconcluſive in the late multiple-poinding), amounted to the *crimen falſi*, the memorialiſts would even here ſubmit a particular anſwer to them: But, as the concluſion is drawn not from forgeries, but from alledged irregularities, the memorialiſts imagine, that they, with ſafety, can leave them at preſent to be judged as repreſented by Mr Dickſon himſelf. If a forgery has been committed by Mr Oman the preſbytery-clerk, it is no doubt competent to ſue him in a proper proceſs before the court of juſticiary. If convicted of forging an extract before this ſentence had its exiſtence, he would no doubt be puniſhed. But a conviction, even for this purpoſe, would, as the memorialiſts imagine, be now altogether impracticable, as the ſentence from which his extracts were taken, bears the ſame date with the ſentence of depoſition approved of, and ratified by the General Aſſembly. There was an extract of the ſentence given out by the clerk before the minutes were ſigned by the ſucceſſive moderators, and made into a regular regiſter, and atteſted by the ſynod. But, that this conduct was conſiſtent with the practice of ſuch courts, has been ſufficiently explained already, and particularly illuſtrated by the decreet of the General Aſſembly formerly produced and printed. The minutes of ſentences are, in the ſtricteſt mode of procedure, only ſigned every ſix months. Extracts during that period are alwiſe held valid; and, in the ſame manner, tho' the minutes ſhould not be ſigned and atteſted for ſome years, the ſentence is effectual from the moment

ment it was pronounced. The memorialiſts ſhall not waſte your Lordſhips time by any further obſervations upon the competency of the court in this queſtion. The law, for the honour aud ſupport of the national church, has declared eccleſiaſtical judicatories ſupreme, and excluded every civil court from reviewing their ſentences. Mr Dickſon has all along diſcovered particular ingenuity in harraſſing the preſbyteries which have been ſo unfortunate as to have any connection with him, and in expoſing them to expences in defending themſelves from his attacks. His litigious diſpoſition is pretty well known. Mr Moffat, miniſter of Newlands, one of the memorialiſts, has felt, in a particular manner, the ſevere effects of it. He, from his ſituation, has been obliged to defend himſelf againſt all the ingenious attacks which Mr Dickſon has made. The conſequence of which has been, that his ſtipend has been as yet little more than ſufficient to ſupport the charges which Mr Dickſon's ingenuity has occaſioned. Upon the whole, the memorialiſts hope, that your Lordſhips will be of opinion, that if the defenders are properly cited, that your Lordſhips will refuſe to ſuſtain your juriſdiction as competent to review ſentences of eccleſiaſtical courts, and more particularly in this cauſe, from which the purſuer can reap no kind of advantage.

In reſpect whereof, &c.

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